

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 63979-0-I
Respondent,)	
)	DIVISION ONE
v.)	
)	
JEFFERY RAY HAAS,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: July 26, 2010
_____)	

Becker, J. — Jeffery Ray Haas argues the trial court violated his right to due process when it relied on hearsay evidence to revoke his suspended sentence. But the court did not need to rely on hearsay evidence because Haas himself admitted the probation violations. We conclude the revocation was supported by sufficient evidence to satisfy due process.

Revocation of a suspended sentence due to probation violations rests within the discretion of the trial court and will not be disturbed absent an abuse of discretion. State v. McCormick, 166 Wn.2d 689, 705-06, 213 P.3d 32 (2009), citing State v. Badger, 64 Wn. App. 904, 908, 827 P.2d 318 (1992). An abuse of discretion occurs only if the court's decision is manifestly unreasonable, or

exercised on untenable grounds, or for untenable reasons. McCormick, 166 Wn.2d at 706. Proof of violations need not be established beyond a reasonable doubt but must only “reasonably satisfy” the court that the breach of conditions occurred. Badger, 64 Wn. App. at 908, quoting State v. Kuhn, 81 Wn.2d 648, 650, 503 P.2d 1061 (1972).

An offender facing revocation of a suspended sentence has minimal due process rights. State v. Nelson, 103 Wn.2d 760, 763, 697 P.2d 579 (1985). A revocation hearing is not a criminal proceeding, so the rights afforded are less than those provided at the time of trial. State v. Dahl, 139 Wn.2d 678, 683, 990 P.2d 396 (1999). Minimal due process entails: (a) written notice of the claimed violations, (b) disclosure to the parolee of the evidence against him, (c) the opportunity to be heard, (d) the right to confront and cross-examine witnesses (unless there is good cause for not allowing confrontation), (e) a neutral and detached hearing body, and (f) a statement by the court as to the evidence relied upon and the reasons for the revocation. Dahl, 139 Wn.2d at 683, citing Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972), and applying these requirements to a revocation hearing; see also Gagnon v. Scarpelli, 411 U.S. 778, 782, 93 S. Ct. 1756, 36 L. Ed. 2d 656 (1973), holding that a probationer is entitled to the same due process rights as outlined in Morrissey.

In 2008, Haas was charged with failing to register as a sex offender, a

felony. He pleaded guilty to the reduced charge of attempted failure to register, a misdemeanor. He was given a suspended sentence of 12 months on the condition that he serve 30 days in jail and comply for one year with the standard rules of supervision, under the supervision of the Department of Corrections.

On February 2, 2009, Haas appeared before Judge Hollis R. Hill for violating the conditions of his supervision. The court found Haas had changed his address “without notice to or permission of DOC [the Department of Corrections].” The court imposed a sanction of 60 days in jail, with credit for 27 days already served, and extended Haas’ probation until December 1, 2009.

In March 2009, Haas’ probation officer reported that he committed more violations. This led to a second hearing before Judge Hill on July 28, 2009. The officer alleged that Haas again failed to get approval to change residences and, on two different occasions, refused to report to the department as directed. A bench warrant was issued for his arrest in April 2009.

At the July hearing, the prosecutor told the court he understood from defense counsel that Haas would be admitting the allegations. The prosecutor said he believed Haas wanted to argue the Department of Corrections could not require him to obtain permission to change residences. The court asked defense counsel, Christopher M. Franklin, if that was correct. Franklin replied, “Mr. Haas’s position is, and I tend to agree, is that DOC is trying to violate him for a condition that they don’t necessarily have the right to impose anyway.”

Haas, he explained, thought the department could not require *advance* approval of his moves because the sentencing court did not explicitly impose that condition, and while that condition was standard for felony offenders, it was not imposed on misdemeanor offenders.

The court responded that it was “not buying that argument” because the 2008 judgment and sentence required Haas to comply with the standard conditions of probation.

[THE COURT]: I have in front of me the standard conditions of probation, which he refused to sign but nonetheless were provided to him, and one of them is “obtain written permission from the community corrections officer,” or “notify the community corrections office before changing residence or employment.”

Mr. Franklin: Right.

Next, as to the alleged violations for failure to report, defense counsel admitted that Haas had failed to report to the department when told to: “Yes, he didn’t go in when he was reported, but he also knew that they were going to arrest him when he wanted to be able to come to court and address this with the court.”

Haas himself then addressed the court. He acknowledged he did not receive prior approval for the address to which he moved but offered the explanation that he did not know which of two houses he was going to move into:

Before I moved this time, I told her I was moving, and I was going to be in Tacoma and I told her I was going to be at one or two addresses. I don’t know which one because both houses need to be worked on, and I moved there because I was at my brother’s, and he was moving.

I was there for a week. I had to move because he moved

out, and this was the only place I could find, and I told her before I moved that I was going to one of these two houses that are a matter of a couple of blocks apart.

And so I moved and Monday -- I moved on the weekend; Monday I told her where I was, what the address was, and I went and registered on Monday when I knew which address I was going to.

Haas said it was difficult to find housing when he was obligated to tell landlords that he has to report the address and register as a sex offender. He expressed frustration with the department's requirements. "It has been -- they have been making it real hard, unnecessarily."

The court tried to clarify Haas' position: "I am still not clear as to whether, Mr. Franklin, your client is admitting the three violations or not? It sounds like he is admitting them with explanation, which I have now heard." Defense counsel replied, "I think in essence that -- I mean technically he is acknowledging . . . but I do think what he is trying to articulate is that he is trying to do his very best to maintain compliance."

The prosecutor argued that if Haas truly believed it was unlawful to hold him to the requirement of prior approval for changing residences, he should have submitted a motion to the court with supporting authority. The prosecutor emphasized that Haas had been convicted of rape of a child in the first degree, so "the entire idea of supervision is that it needs to be onerous; that they know exactly where he is so they can make sure that he is complying with his responsibilities." The prosecutor asked the court to revoke Haas' suspended sentence or extend his probation until May 2010.

The court decided to revoke the suspended sentence. The court rejected Haas' legal argument that the department did not have the power to require prior approval of his residences and also rejected his explanation that he did his best

to comply with the rules:

What I understand you're saying is that you believe your client tried to comply and that -- and alternatively that he doesn't think that the department has the authority to require him to notify them before he moves.

On the legal issue, if what you're making is a motion to the court to find that the department of corrections doesn't have the legal authority to do what it is doing, that motion is denied. The department does have that authority.

If you want to brief it, if your client wants to brief it, that's fine. I have seen no authority to the contrary, absolutely none.

As far as looking at -- this is not the first time Mr. Haas has been in front of me for probation violations. It is the second time, and as I look at the record in this case, I don't find compliance.

The court then mentioned details that appear to have been based on the probation officer's report. Defense counsel objected to "the court . . . using the report to base that information on" and noted the probation officer was not present. Counsel cited State v. Abd-Rahmaan, 154 Wn.2d 280, 111 P.3d 1157 (2005). Abd-Rahmaan holds that due process guarantees the right to confront adverse witnesses in sentence modification hearings unless good cause exists. Responding to this argument, the court stated it was clear from the record at the hearing that Haas was disregarding the conditions of probation that he knew he was bound by:

I don't even need the underlying facts to look to the record here and find that Mr. Haas's probation has already been violated once, and this is the second time -- this is the second time with the same explanation or excuse or whatever you want to call it, that the department doesn't have the authority to supervise him in this way, and I believe it was made perfectly clear in the judgment and sentence, and in the conditions of probation that your client refused to sign, that they do have that authority, so . . . I am finding that you have intentionally violated the conditions of your

probation.

The court sentenced Haas to 275 days in jail, with credit for 23 days already served. Haas appeals and argues the trial court improperly relied on the probation officer's allegations that he failed to inform the department of his change of address or failed to seek prior approval of that residence.

Based on this record, we need not address Haas' claim that this hearsay evidence was not shown to be reliable, nor the officer's live testimony shown to be difficult to obtain. The record indicates the parties came to the court with the understanding that Haas was going to admit his violations. And although Haas argues on appeal that he did not admit the violations, the transcript shows that he did—not only in his own testimony but through counsel. When the court insisted that Haas clarify whether or not he was admitting the violations, counsel said, "I mean technically he is acknowledging" and then represented that Haas nevertheless had been trying his best to comply with the requirements. This admission by itself was sufficient "to reasonably satisfy the court that the probationer has breached a condition under which he was granted probation." Kuhn, 81 Wn.2d at 650; see Badger, 64 Wn. App. at 908-09 (noting that defendant's admissions, standing alone, constituted sufficient evidence of noncompliance, without the evidence defendant deemed inadmissible hearsay).

Due process requires that judges articulate the factual basis of their decisions. Dahl states that while oral rulings are permitted, trial courts are

strongly encouraged to enter written findings to prevent unnecessary confusion. Dahl, 139 Wn.2d at 689. In Dahl, the trial court's oral ruling was vague and the case had to be remanded for production of a record that would be amenable to judicial review. Dahl, 139 Wn.2d at 689. Here, although our record does not contain written findings, the transcript and oral ruling make the court's rationale sufficiently clear: Haas not only admitted the current violations, he had previously violated his probation and offered the same explanation and legal argument that the court again found unpersuasive. We conclude the court did not abuse its discretion.

Affirmed.

Becker, J.

WE CONCUR:

Leach, a.c.j.

Schiveller, J.

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